



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 5, 2013

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Kevin Carney**
Tax Registry No. 903564
Queens Court Section
Disciplinary Case Nos. 2011-5913 & 2011-6556

Police Officer Sabino Guzman
Tax Registry No. 941872
Manhattan Court Section
Disciplinary Case Nos. 2011-5792 & 2012-7210

The above named members of the service appeared before Assistant Deputy Commissioner David S. Weisel on September 24, 2012, and were charged with the following:

DISCIPLINARY CASE NO. 2011-5913 POLICE OFFICER KEVIN CARNEY

1. Said Police Officer Kevin Carney, while assigned to the 48th Precinct on or about and between February 21, 2010 and October 3, 2011, upon observing, having become aware of, or upon receiving an allegation of corruption or misconduct involving a member of the service, did fail and neglect to immediately notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBER OF THE SERVICE

2. Said Police Officer Kevin Carney, while assigned to the 48th Precinct on or about October 3, 2011, did wrongfully impede a Department investigation, to wit: during an official Department Interview conducted by Sergeant Bryan Brooks, Group 21, made false or misleading statements to Sergeant Brooks regarding his actions at the scene of an automobile accident on February 21, 2010 on the Major Deegan Expressway.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-6556 POLICE OFFICER KEVIN CARNEY

1. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about July 20, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: having observed that marijuana was being used in his household, said Police Officer failed to take police action.

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about and between May 8, 2010 and August 18, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of numerous summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

3. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about and between July 22, 2010 and August 23, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer placed multiple phone calls to various women seeking sexual services in exchange for United States Currency.

P.G. 203-10, Page 1, Paragraph 5

**PROHIBITED CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2011-5792 POLICE OFFICER SABINO GUZMAN

1. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on-duty, on or about February 21, 2010, with intent to defraud, he made or caused a false entry in the business records of an enterprise, to wit: Said Officer listed Police Officer Orlando Recio as the driver of an automobile on a Police Accident Report having knowledge that Officer Recio was not the actual driver.

N.Y.S. PENAL LAW 175.05

**FALSIFYING BUSINESS RECORDS
IN THE SECOND DEGREE**

2. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on-duty, on or about February 21, 2010, in Bronx County, being a public servant, with the intent to obtain a benefit or deprive another person of a benefit, committed an act relating to said public servant's office but constituting an unauthorized exercise of said public servant's official functions, knowing that such act was unauthorized or he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

N.Y.S. PENAL LAW 195.00 (1)

OFFICIAL MISCONDUCT

DISCIPLINARY CASE NO. 2011-5792 POLICE OFFICER SABINO GUZMAN

3. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on-duty, on or about September 12, 2011, did wrongfully impede a Department investigation, to wit: during an official Department Interview conducted by Sergeant Bryan Brooks, Group 21, made false or misleading statements to Sergeant Brooks regarding what occurred at the scene of an automobile accident that said Officer responded to on February 21, 2010 on the Major Deegan Expressway.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2012-7210 POLICE OFFICER SABINO GUZMAN

1. Said Police Officer Sabino Guzman, assigned to the Manhattan Court Section, on or about November 14, 2011, while on duty, was unprepared at the Bronx Traffic Violations Bureau, to wit: while present to provide testimony pertaining to a summons said Police Officer issued, said Police Officer failed to bring a copy of the summons he issued and his applicable Department issued memo book, resulting in a "Not Guilty" disposition on one (1) case.

P.G. 211-01, Page 2, Paragraph 11 DUTIES AND CONDUCT IN COURT

2. Said Police Officer Sabino Guzman, assigned to the Manhattan Court Section, on or about April 9, 2011, while on-duty, failed and neglected to maintain said officer's Activity Log as required.

P.G. 212-08, Pages 1-2

ACTIVITY LOGS

In a Memorandum dated July 15, 2013, Assistant Deputy Commissioner David S. Weisel found Police Officer Kevin Carney Guilty of Specification Nos. 1 and 2, in Disciplinary Case No. 2011-5913 and Guilty of Specification Nos. 1, 2 and 3, in Disciplinary Case No. 2011-6556. Assistant Deputy Commissioner David S. Weisel also found Police Officer Sabino Guzman Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification No. 3 in Disciplinary Case No. 2011-5792. Police Officer Guzman was found Guilty of Specification Nos. 1 and 2, in Disciplinary Case No. 2012-7210. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct committed by Police Officer Carney and Police Officer Guzman in these matters warrants their separation from the Department. However, with consideration of their otherwise good disciplinary history and service record, I will permit a method of separation other than dismissal from the Department.

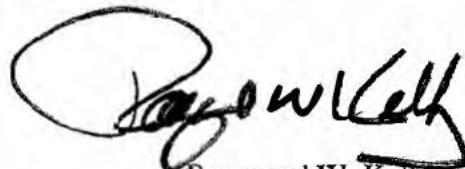
DISCIPLINARY CASE NOS. 2011-5913 & POLICE OFFICER KEVIN CARNEY
2011-6556

DISCIPLINARY CASE NOS. 2011-5792 & POLICE OFFICER SABINO GUZMAN
2012-7210

It is therefore directed that Police Officer Carney be offered a post trial negotiated agreement in which he will immediately file for service retirement and separate from the Department upon reaching 20 years of service (on 9/11/13 at 2400 hours), he will also forfeit thirty (30) vacation days, be placed on One (1) Year Dismissal Probation, waive all time and leave balances, including terminal leave, if any, plus waive all suspension days previously served, with and without pay, if any. Police Officer Carney shall retire while on full-duty status.

It is further directed that Police Officer Guzman be offered a post-trial negotiated agreement in which he will immediately file for vested interest retirement, forfeit thirty (30) vacation days, be placed on One (1) Year Dismissal Probation, waive all time and leave balances, including terminal leave, if any, plus waive all suspension days previously served, with and without pay, if any. Police Officer Guzman shall retire while on full-duty status.

Such retirements shall also include Police Officer Carney's and Police Officer Guzman's written agreement not to initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Carney or Police Officer Guzman does not agree to the terms of their retirements as noted, this Office is to be notified without delay. These agreements are to be implemented **IMMEDIATELY**.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

*The
City
of
New York*

In the Matter of the Disciplinary Proceedings : x

- against - : FINAL

Police Officer Kevin Carney : ORDER

Tax Registry No. 903564 : OF

Queens Court Section : DISMISSAL x

Police Officer Kevin Carney, Tax Registry No. 903564, Shield No. 6275, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2011-5913 and 2011-6556, as set forth on form P.D. 468-121, dated October 11, 2011 and January 9, 2012, respectively, and after a review of the entire record, in Disciplinary Case No. 2011-5913, Respondent has been found Guilty as Charged. In Disciplinary Case No. 2011-6556, Respondent has been found Guilty of Specification No. 1 and, having pleaded Guilty to Specification Nos. 2 and 3, is found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Kevin Carney from the Police Service of the City of New York.

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

July 15, 2013

In the Matter of the Charges and Specifications : Case Nos.
2011-5913 & 2011-6556

- against - :

Police Officer Kevin Carney :

Tax Registry No. 903564 :

Queens Court Section :

At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable David S. Weisel
 Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Nancy Slater, Esq.
 David Bernstein, Esq.
 Louis Bara, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Stuart London, Esq.
 Worth, Longworth & London, LLP
 111 John Street Suite 640
 New York, New York 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038



POLICE DEPARTMENT

July 15, 2013

In the Matter of the Charges and Specifications : Case Nos.
2011-5792 & 2012-7210

- against - :

Police Officer Sabino Guzman :

Tax Registry No. 941872 :

Manhattan Court Section :

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Nancy Slater, Esq.
David Bernstein, Esq.
Louis Bara, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Angelo G. MacDonald, Esq.
Pappalardo & Pappalardo, LLP
700 White Plains Road – Suite 355
Scarsdale, New York 10583

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named members of the Department appeared before the Court on September 24, 2012, January 16, 2013, February 27, 2013, February 28, 2013, March 20, 2013, and March 28, 2013, charged with the following:

Disciplinary Case No. 2011-5913

1. Said Police Officer Kevin Carney, while assigned to the 48th Precinct on or about and between February 21, 2010 and October 3, 2011, upon observing, having become aware of, or upon receiving an allegation of corruption or misconduct involving a member of service, did fail and neglect to immediately notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 – ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT AGAINST MEMBER OF THE SERVICE

2. Said Police Officer Kevin Carney, while assigned to the 48th Precinct on or about October 3, 2011, did wrongfully impede a Department investigation, to wit: during an official Department Interview conducted by Sergeant Bryan Brooks, Group 21, made false or misleading statements to Sergeant Brooks regarding his actions at the scene of an automobile accident on February 21, 2010 on the Major Deegan Expressway.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT
PROHIBITED CONDUCT,
GENERAL REGU[LATIONS]

Disciplinary Case No. 2011-6556

1. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about July 20, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: having observed that marihuana was being used in his household, said Police Officer failed to take police action.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about and between May 8, 2010 and August 18, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of numerous summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Kevin Carney, while assigned to the 48th Precinct, on or about and between July 22, 2010 and August 23, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said placed multiple phone calls to various women seeking sexual services in exchange for United States Currency.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2011-5792

1. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on-duty, on or about February 21, 2010, with intent to defraud, he made or caused a false entry in the business records of an enterprise, to wit: Said Officer listed Police Officer Orlando Recio as the driver of an automobile on a Police Accident Report having knowledge that Officer Recio was not the actual driver.

N.Y.S. PENAL LAW 175.05 FALSIFYING BUSINESS RECORDS
IN THE SECOND DEGREE

2. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on-duty, on or about February 21, 2010, in Bronx County, being a public servant, with the intent to obtain a benefit or deprive another person of a benefit, committed an act relating to said public servant's office but constituting an unauthorized exercise of said public servant's official functions, knowing that such act was unauthorized or he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

N.Y.S. PENAL LAW 195.00 (1) – OFFICIAL MISCONDUCT

3. Said Police Officer Sabino Guzman, while assigned to the 46th Precinct, while on duty, on or about September 12, 2011, did wrongfully impede a Department investigation, to wit: during an official Department Interview conducted by Sergeant Bryan Brooks, Group 21, made false or misleading statements to Sergeant Brooks regarding what occurred at the scene of an automobile accident that said Officer responded to on February 21, 2010 on the Major Deegan Expressway.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2012-7210

1. Said Police Officer Sabino Guzman, assigned to the Manhattan Court Section, on or about November 14, 2011, while on-duty, was unprepared at the Bronx Traffic Violations Bureau, to wit: while present to provide testimony pertaining to a summons said Police Officer issued, said Police Officer failed to bring a copy of the summons he issued and his applicable Department issued memo book, resulting in a "Not Guilty" disposition on one (1) case.

P.G. 211-01, Page 2, Paragraph 11 DUTIES AND CONDUCT IN COURT

2. Said Police Officer Sabino Guzman, assigned to the Manhattan Court Section, on or about April 9, 2011, while on-duty, failed and neglected to maintain said officer's Activity Log as required.

P.G. 212-08, Pages 1-2 ACTIVITY LOGS

The Department was represented by Nancy Slater, David Bernstein and Louis Bara, Esqs., Department Advocate's Office. Respondent Carney was represented by Stuart London, Esq., Worth, Longworth & London LLP. Respondent Guzman was represented by Angelo G. MacDonald, Esq., Pappalardo & Pappalardo LLP.

In Case No. 2011-5913, Respondent Carney pleaded Not Guilty. In Case No. 2011-6556, he pleaded Guilty to Specification Nos. 2 and 3 and testified in mitigation of the penalty. He pleaded Not Guilty to Specification No. 1.

In Case No. 2011-5792, Respondent Guzman pleaded Not Guilty. In Case No. 2012-7210, he pleaded Guilty and testified in mitigation of the penalty.

A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2011-5913, Respondent Carney is found Guilty. In Case No. 2011-6556, Respondent Carney is found Guilty of Specification No. 1. Having pleaded Guilty to Specification Nos. 2 and 3, he is found Guilty.

In Case No. 2011-5792, Respondent Guzman is found Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification No. 3. Having pleaded Guilty to the specifications in Case No. 2012-7210, he is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Orlando Recio, Police Officer Jose Ramos,¹ Police Officer Juan Maria, Sergeant Ramon Valdez, Detective Chenenne Guevarra-Francis, Detective Derick Cuebas, Sergeant Karen Roberts, Undercover Detective #5034, Detective Kai Mendez, Detective Juan Vazquez and Lieutenant Javad Valad as witnesses.

Police Officer Orlando Recio

Recio had been a member of the Department for over eight and a half years. He formerly was assigned to the 48 Precinct. In February 2010, Respondent Carney and Police Officer Christopher Scott were two of his union delegates. Respondent Carney was one of Recio's best friends, and they socialized together while off duty. His relationship with Scott, in comparison, was more work-oriented.

¹ This was *not* the same Police Officer Jose Ramos at the center of the Bronx ticket-fixing scandal.

Recio worked on the evening of Saturday, February 20, 2010, and ended his tour at 0205 hours the next day. Afterward, he and one of his fellow anticrime team members, Police Officer Jose Ramos, went to a bar. Ramos drove to the bar, as Recio had lent his car earlier in the day to Person A, a woman he had been dating casually for approximately three months. The car, a BMW, was registered and insured to Recio's father.

At 0445 hours, Ramos received a call from his cousin informing him that Person A had been involved in an accident on the Major Deegan Expressway. Ramos drove him to the scene of the accident, arriving there approximately 15 minutes later. Recio was dressed in plainclothes at the time.

When Recio and Ramos arrived at the scene, the Fire Department and on-duty police officers, subsequently identified as Respondent Guzman and Police Officer Juan Maria, already were there. Recio heard that Person A was going to be arrested. He assumed that the arrest would be for driving while intoxicated (DWI) because Person A had been on her way home from a party when the accident occurred.

Recio identified himself to Respondent Guzman as a police officer in the 48 Precinct, gave him his license, and told him that he had been the driver of the BMW. He told this to Respondent Guzman to prevent Person A from getting arrested. Respondent Guzman replied, "Let's just clear up the accident," and he walked away toward Maria. Meanwhile, Recio called Respondent Carney because he felt he that he was in trouble and wanted to speak with his delegate.

Respondent Carney arrived at the scene approximately 20 minutes later and Recio introduced him to Respondent Guzman. While Respondents talked, Recio went to the BMW to

remove his personal belongings. Before leaving the scene, Respondent Carney told Recio, "You're good."

Recio exchanged telephone numbers with Respondent Guzman so that they could "make sure the Accident Report was correct . . . [t]hat the story was fine." A day or two later, Recio and Respondent Guzman met at the Bronx Zoo. Respondent Guzman showed Recio the Police Accident Report (PAR) (Department's Exhibit [DX] 1, PAR; Court Exhibit 1, PAR cover sheet with code explanations). The PAR inaccurately indicated that Recio was the driver of the vehicle.

The PAR did not list any witnesses. Recio testified that although there were other people at the scene, he did not know if any of those people actually witnessed the accident. Recio told Respondent Guzman that the PAR looked good. At trial, Recio agreed that it was not common practice for a police officer to meet with the parties the next day to review a PAR.

Recio reported to his insurance company that he was driving the car at the time of the accident. As a result, Recio admitted, he received approximately \$14,000 (see Respondent's Exhibit [RX] A, insurance check to Recio's father for \$14,110.28).

For his misconduct, Recio pled guilty to Department charges in exchange for a penalty offer of vested-interest retirement, 60 suspension days, 30 vacation days, and placement on one year of dismissal probation.

On cross examination, Recio testified that he believed he worked his entire tour on the day of the accident but was not entirely certain. He and Ramos were drinking at the bar for approximately two and a half hours before they went to the scene of the accident. Recio called Respondent Carney to the scene because the situation made him nervous.

Recio never had contact with Respondent Guzman or Maria before the day of the accident. To his knowledge, Respondent Carney did not know them either. Although Respondent Carney did not arrive at the scene until a half hour after Recio, Recio mistakenly stated in his official Department interview that Respondent Carney was there first. By the time Recio arrived, Person A already had been removed from the BMW. Recio did not know whether Person A was in the BMW when Respondent Guzman arrived at the scene.

Recio spoke to Person A in Spanish. She did not smell of alcohol or have bloodshot eyes. She did not slur her speech or give any other indication that she was intoxicated. She did not indicate to Recio that she had spoken with the uniformed officers. Recio did not know at the time whether Respondent Guzman or Maria also spoke Spanish.

When Recio told Respondent Guzman that he was the driver of the BMW, he said it with sincerity. It was his intention to convince Respondent Guzman that he really was the driver. He did not ask Respondent Guzman to do him a favor or falsify a report.

Recio believed that he showed Respondent Guzman his shield upon arriving at the scene, though he did not specifically recall doing so. He agreed that there was a lot of activity going on at the scene and that there was a state of confusion. It was dark out and there was traffic on the expressway.

Recio was at the scene for 30 to 45 minutes. He did not recall how many times he spoke to Respondent Guzman during that period. Recio did not recall expressing to Respondent Guzman concern that Recio or Person A would be in trouble.

When introducing Respondents to each other, Recio did not recall saying anything such as, "This is my delegate, I know Maria wants to arrest [Person A] but see what you can do." The conversation between Respondents lasted very briefly, and Recio did not hear any of it. Recio

was not aware at the time that the driver of the other vehicle involved in the accident had been injured. Recio was just concerned about himself.

Recio never told Ramos that Person A was suspected of being intoxicated and they did not discuss why Respondent Carney was present at the scene. Recio did not recall Ramos ever telling him, "Everything is good, [Person A]'s not going to be locked up," though it was possible that it was Ramos and not Respondent Carney who made such a statement. Even if it was Respondent Carney who said, "It's good," it could have been something more like, "You good?" as if asking, "You need anything else before I leave?" Recio was mistaken when he stated in his official Department interview that Respondent Carney told him, "She's not under lock up."

Recio did not have any interaction with Maria at the scene. He did not know if Maria spoke with Ramos or Respondent Carney. He did not ask Respondents to speak with each other on his behalf. Respondents did converse with each other, but Respondent Carney did not come back to Recio and tell him that the PAR was going to be falsified. All he said to Recio was, "You're good," which might have been stated as a question. Between the time of the accident and the time that Recio met Respondent Guzman at the zoo, Respondent Carney never told Recio that he had interceded to have Respondent Guzman falsify a report.

Recio agreed that it was common practice for a police officer to follow up with a driver involved in a car accident to clear up information before submitting a PAR. It was not unusual for an officer to get the driver's telephone number. When he reviewed the PAR at the Bronx Zoo, Recio told Respondent Guzman that the report looked accurate. It was his intention to convince Respondent Guzman that the report was in fact truthful. Recio never conferred any benefit on Respondent Guzman for his actions.

Recio admitted that he lied a lot with respect to this case. He lied during the entire first half of his official Department interview. He falsely indicated in the interview that he was involved in the accident and had waited for his girlfriend outside an apartment for two hours. He made up that story to protect himself, which he agreed was the most important thing for him. It was his intention to lie throughout the entire interview, but he stopped lying when investigators confronted him with a tape recording of Scott and Police Officer John Rudden talking about the accident. Neither Scott nor Rudden was present at the scene, and Recio never discussed the accident with them.

Recio also lied to the insurance company. He did not recall if the insurance company informed him that he was speaking under oath, but he admitted that he would not have told the truth even if he realized that he was under oath. He wanted to protect both himself and his father. He was concerned that, because Person A was not authorized to drive the car, he would not receive any insurance payment if he told the truth. He also was concerned that he would not receive payment if Person A was arrested for DWI. He forwarded a copy of the PAR with false information to the insurance company.

Recio always registered and insured his cars under his father's name. He was aware that this was improper. He agreed that an elderly driver received a lower insurance rate than a driver his own age.

Recio attempted to sound convincing and sincere when lying to Respondent Guzman, in his official interview, and on the telephone with the insurance company.

Recio pleaded Guilty to Department charges of Official Misconduct, making false or misleading statements during his official Department interview, making statements to Respondent Guzman which were inaccurate about being the driver of the car, and telling his

insurance company that he was the driver. He did not receive charges for grand larceny with regard to accepting the fraudulently-issued insurance check.

On re-direct examination, Recio testified that his relationship with Person A was purely sexual. He was not interested in having a serious relationship with her.

When Recio told Respondent Guzman that he had been driving the BMW, Respondent Guzman did not challenge him.

On re-cross examination, Recio claimed that he did not know Person A's last name or telephone number. He saw her on approximately ten occasions but never went to her residence. They would meet at a bar or his cousin's house. He denied that the reason he did not give the Internal Affairs Bureau (IAB) Person A's contact information was because he thought it might result in either his or Person A's arrest.

Upon questioning by the Court, Recio testified that there were three personal vehicles, one or two fire trucks, an ambulance, and a Department vehicle all stopped at the accident when he and Ramos arrived at the scene. Ramos parked in front of the other cars. At the time, Respondent Guzman was standing between two cars toward the rear of the scene. Person A was seated in his cousin's car.

Recio asserted that even though he did not find Person A to be intoxicated, he still identified himself as the driver of the BMW because the car was registered under his father's name and he did not want to get his father involved in the situation. Recio was listed on the insurance policy as an authorized driver of the vehicle.

It was Recio's idea to meet with Respondent Guzman and review the PAR. They actually met on Southern Boulevard, outside the Bronx Zoo. They chose that location because it

was convenient for both of them. Neither Recio nor Respondent Guzman was on duty at the time of the meeting.

Police Officer Jose Ramos

Ramos, a 10-year member of the Department, was assigned to the 48 Precinct. After finishing his tour at 0205 hours on February 21, 2010, he went to a bar with Recio, both his co-worker and a good friend. That night, after receiving a telephone call, Recio asked Ramos to drive him to a scene on the Major Deegan Expressway.

On the way to the accident scene, Recio informed Ramos that “this bitch got into an accident” with his car. The woman, i.e., Person A, was someone Recio was “messing around with.” Recio was on the phone for most of the drive, and Ramos believed that the person on the other end of the line was the woman in question. Recio asked if she was okay and if the police were there.

Upon arrival, Ramos parked his vehicle in front of the accident. He saw the front driver’s wheel of the BMW sport utility vehicle (SUV) – that Recio regularly drove on top of the median. Person A no longer was in the car. Ramos spoke with her in Spanish to see if she was all right. She said that she had been at a party that night and sounded nervous. Ramos opined that he would not have been able to smell alcohol on her from where he was standing.

Meanwhile, Recio approached the marked Department vehicle that was present and spoke for 10 to 15 minutes with Respondent Guzman. Ramos could not hear what Recio and Respondent Guzman were talking about.

Ramos testified that Respondent Carney arrived at the scene and approached Recio and Respondent Guzman. Ramos described Respondent Carney as a good friend as well. He

believed that Respondent Carney was there to "help out with the accident or anything like that or that Officer Recio might need."

Recio and Respondents spoke for two to five minutes, but Ramos could not hear what they were talking about. Ramos subsequently drove Recio home. Recio told him that the police officers at the scene were "kind of dicks."

On cross examination, Ramos stated that to his knowledge, Respondent Carney was not notified of the accident until after Ramos and Recio already were at the scene. When Recio was on the phone during the drive over, Ramos never sensed that he was speaking to one of the officers already at the scene. There was no mention of alcohol in the conversation.

Ramos did not recall if an ambulance already was at the scene when he arrived. Recio checked on Person A before going to the Department vehicle to speak with Respondent Guzman. Ramos did not recall seeing Recio hand his driver license to Respondent Guzman. He did not observe any sort of argument between them.

Ramos had met Person A once before the day of the accident. There was nothing unusual about her behavior that stood out at that first meeting. She had the same demeanor and spoke the same way on the day of the accident as she did at their first meeting. He did not know if she spoke English.

Although Ramos never had been involved in a DWI arrest, he had viewed people who were arrested for DWI. Ramos first testified that he could not tell if Person A was drunk. He stated that her speech was not slurred and could not recall if her eyes were red and bloodshot. While they spoke, she was seated inside a minivan and he was standing outside the van, a couple of feet apart from each other. He did not see any alcoholic containers in or around any of the vehicles at the scene.

Ramos then testified it did not appear that Person A was intoxicated, and he did not overhear anybody say anything to indicate this. Rather, he assumed that Respondent Carney came to the scene because the on-duty officers might have thought that she was drunk and would arrest her.

At no point did Ramos see Maria speak with Person A.

Recio and Respondent Guzman spoke for 10 to 15 minutes before Respondent Carney arrived. Ramos did not recall Recio taking Respondent Carney off to the side to speak privately. At no point did he see Respondent Carney speak privately with Respondent Guzman or talk to Maria. While Recio spoke with Respondent Guzman, Maria kept going in and out of the Department vehicle. Ramos did not know if Maria participated in the conversation that was taking place outside of the vehicle. Ramos never saw Recio or Respondent Carney being shown a PAR. Ramos did not have a conversation with Recio about the completion of the PAR.

Everybody left the scene approximately five minutes after Respondent Carney arrived. Ramos did not recall speaking to Respondent Carney before leaving.

While driving away from the scene, Ramos and Recio did not discuss Person A's physical condition. Ramos did not know that Recio asked that his name be listed as the driver on the PAR or that Recio subsequently met with Respondent Guzman.

Although Ramos did not think that he observed misconduct that day, he stated the opposite during his official Department interview. He testified at trial that because Respondent Carney was present, he assumed that "something might have happened." Ramos assumed that Respondent Carney was there because Recio believed the on-duty officers were going to "try to" arrest Person A. He never had any discussion with Respondent Carney about the matter.

Ramos never saw Person A again after that day.

On re-direct examination, Ramos testified that Recio spoke Spanish while on the phone on the way to the accident scene. They arrived at the scene at approximately 0430 hours. Based on his observations of the accident, Ramos concluded that the driver either was going too fast or was drunk.

While Recio was speaking with Respondent Guzman, Ramos was focused on seeing that Person A was all right and on getting personal possessions out of Recio's vehicle. He still was focused on those things after Respondent Carney arrived. He still was good friends with Respondent Carney at the time of trial.

On re-cross examination, Ramos agreed that Recio's BMW could have been run off the road by another car. He had no factors at his disposal, other than that the vehicle was on the median, to support the conclusion that the driver was intoxicated. Nor did he have any factors to support a conclusion that Respondent Carney came to the scene to cover up a DWI. Ramos was not disciplined in any way for his actions that day.

Upon questioning by the Court, Ramos asserted that he did not receive training while at the Police Academy on making DWI arrests.

Ramos worked in the 48 Precinct, and the accident occurred in the 46 Precinct. The two precincts were adjacent to each other.

As far as he remembered, Ramos saw only front-end damage to Recio's vehicle.

Police Officer Juan Maria

Maria, an eight-year member of the Department, was assigned to the 46 Precinct. He admitted that he pleaded Guilty in a prior disciplinary proceeding to ticket-fixing charges. The proposed penalty for that misconduct was the forfeiture of 25 vacation days, 5 suspension days,

and one year of dismissal probation. At the time of his testimony, the case was not yet approved by the Police Commissioner (see *Case No. 2011-5788* [Sept. 25, 2012]).

Prior to February 21, 2010, Maria had made approximately six arrests for DWI. He had received training on what to look for when making a determination as to when someone was intoxicated. These included watery eyes, slurred speech, an odor of alcohol, and being unsteady on one's feet. Maria did not know Respondent Carney, Recio or Scott prior to the day in question. He and Respondent Guzman worked the same tour in the same command but did not socialize together outside of work. Respondent Guzman was known for making a lot of DWI arrests.

At approximately 0430 hours on February 21, 2010, after Maria's regular partner returned to the command to process arrests, Maria partnered with Respondent Guzman. At "approximately" 0447 hours, they responded to the accident on the Major Deegan Expressway. Upon their arrival, they approached the BMW, which was located at the front of the accident scene. There were multiple occupants in the car, and Maria asked them who the driver was. He did not recall if there was anybody sitting in the driver's seat, but a "small petite female" informed him, "I was the one driving this vehicle." Maria did not recall if he spoke to her in English or Spanish. Maria described her as being shaken up, with watery eyes and the smell of alcohol.

Maria testified that Respondent Guzman quickly approached and started speaking with Person A. Maria believed that Person A was intoxicated and that he would be arresting her for DWI, but he wanted Respondent Guzman to confirm that Person A was intoxicated because he was "like the DWI master."

Person A told Respondent Guzman that she had a boyfriend who was a member of the service. "The next thing you know, phone calls were being made." Both Person A and Respondent Guzman spoke on the phone, but Maria did not hear the conversation. When Maria subsequently asked if Person A was going to be arrested, Respondent Guzman replied negatively. Maria was a little upset.

Maria did not recall if, when he asked Respondent Guzman to confirm whether Person A was intoxicated, he indicated to Respondent Guzman that Person A was the driver. Respondent Guzman told Maria that Person A would not be arrested because her boyfriend was a member of the service, he knew the boyfriend, and the boyfriend was a good guy.

Recio subsequently arrived at the scene and approached Respondent Guzman. They shook hands, and Recio just walked around "like he knew what was going on." Recio was wearing plainclothes.

Because Maria knew at that point that no arrest would be made, he wanted nothing further to do with the situation. He explained, "I was like whatever. . . . Just don't tell me nothing else. I don't want to know." Before leaving, Recio went to shake Maria's hand. Maria stated, "I shook his hand. I didn't really say much. I didn't feel too comfortable."

When they returned to their vehicle, Respondent Guzman told Maria, "I got this, don't worry about this." Maria replied, "I don't want to know nothing. . . . This is the last time I'm talking about this." Respondent Guzman filled out the PAR for the accident. Recio was listed on the report as the driver even though that was not true.

On cross examination, Maria testified that he and Respondent Guzman arrived at the scene 10 to 15 minutes after the accident occurred. Maria went to the BMW while Respondent

Guzman went to the other car that was involved in the accident. Maria agreed that the scene was a state of confusion.

Maria did not recall whether Person A had slurred speech or was unsteady on her feet. He also did not recall if he first encountered Person A outside or inside of the BMW. She did not appear to be injured. Maria's interaction with Person A lasted about a minute.

Maria conceded that Respondent Guzman had much more experience than Maria with DWI cases. Respondent Guzman had his own portable breathalyzer and had received awards for his work on DWI cases. Maria did not tell Respondent Guzman that Person A admitted being the driver of the BMW. Maria could not hear what Respondent Guzman discussed with her. Person A's conversation with Respondent Guzman lasted longer than her conversation with Maria. Maria asked Respondent Guzman to perform a breathalyzer test on Person A but Respondent waved him off, saying "Nah, nah, nah . . . I got it." Maria admitted that Respondent Guzman was in a better position than Maria to evaluate whether she was intoxicated. Maria agreed that evaluating someone's degree of intoxication is a subjective determination. If he and Respondent Guzman disagreed on someone's level of intoxication, he would rely on Respondent Guzman's expertise. He agreed, "In this case, you did take his expertise; correct?" Maria did not perform any coordination tests on Person A.

Maria admitted that before Recio arrived, Respondent Guzman already had indicated to Maria that Person A was not going to be arrested for DWI. Recio arrived at the scene approximately 15 minutes after Maria and Respondent Guzman. It was the first time that Maria ever saw Recio. Recio did not show Maria his shield. After Recio arrived, Guzman "kind of like confirmed that nah, nah, nah, she's not gonna get arrested." Maria did not hear what Respondent Guzman and Recio said to each other and did not observe Respondent Guzman talk

to any member of the service other than Recio. Maria did not recall seeing Respondent Carney. Maria did not recall Respondent Guzman mentioning to him that he and Recio went to the Police Academy together. When asked why he was upset by the situation, Maria replied, "It came down to me not getting the collar and somebody was hurt so I was like why is she getting a break."

On re-direct examination, Maria testified it was his impression after Respondent Guzman and Person A spoke that she was not going to get arrested because her boyfriend was a police officer.

Upon questioning by the Court, Maria confirmed that he saw Recio drive up to the accident scene.

The Wiretaps

The investigation into Respondents began with a wiretap related to the Bronx ticket-fixing investigation. Police Officers Christopher Scott and John Rudden, both union delegates in the Bronx from separate precincts, were recorded speaking about the accident. The conversation raised questions of police misconduct and led to wiretaps on Respondent Carney's phone.

At trial, the Department called several witnesses to introduce the wiretaps, which also allegedly included evidence of Respondent Carney (a) knowing about marijuana use by the mother of his child, Pers, and (b) soliciting prostitutes over the phone. The witnesses, assigned to IAB, intercepted and transcribed the phone calls. The wiretaps were as follows: DX 4 & 4a-b, recording and transcripts of Scott-Rudden calls, intercepted February 22, 2010, testified to by Sergeant Ramon Valdez; DX 2 & 2a-c, recording and transcripts of Person B- Respondent Carney calls, concerning Respondent Carney allegedly throwing out Person B's

marijuana, intercepted July 20, 2010, testified to by Detective Chenenne Guevarra-Francis, Detective Derick Cuebas and Sergeant Karen Roberts; DX 3 & 3a-b, recording and transcripts of Person B-Respondent Carney calls concerning marijuana, intercepted July 21 and July 22, 2010, respectively, testified to by Francis; DX 5 & 5a, recording and transcript of Rivera-Respondent Carney call concerning marijuana, intercepted July 24, 2010, testified to by Undercover Detective No. 5034 (UC 5034); DX 6 & 6a-f, recording and transcripts of calls between Respondent and various women, intercepted July 22, July 31, and August 23, 2010, testified to by Detective Kai Mendez; and DX 7 & 7a-b, recording and transcripts of calls between Respondent and various women, intercepted July 22, 2010, testified to by Detective Juan Vazquez. Emendations to the transcripts have been made according to the recordings.

A. The Scott-Rudden Calls

In the first Scott-Rudden call (DX 4a), Scott, of the 48 Precinct, called Rudden, of the 46 Precinct, and asked if Rudden had heard “about something that happened uh early Sunday morning [i.e., February 21, 2010] with two of your guys [i.e., Maria and Respondent] on the Deegan.” Rudden had not. When Scott called back, he told Rudden, “Listen I had one of my guys . . . his girl . . . wrecking her car on the Deegan, on the 179 street . . . the overpass whatever it is. Um, it’s actually the fiancé of one of my cops and it was actually his truck and they were going to lock her up and they were [giving] her [].” The arrest would have been for DWI. When Rudden asked, “Was she banged up?,” Scott replied, “Uh, yeah . . . she was fucked up, but uh, you know . . . the[re] w[]ere two other people in the car. You know what everybody was well [it] should’ve [just] turned out to be . . . no problem[,] I got in touch[,] everybody’s good[,]

it's . . . a 93 queen, you know [i.e., a car accident, cf. radio code signal 10-93Q, "other report prepared," such as a PAR].

Scott told Rudden that he had written down the names of the 46 Precinct officers but could not recall them offhand. “[L]ong story short they gave uh Kevin Carney ended up talking to one of the guys then the guy's like . . . [well] you know it's not me it's my partner you know who wants to lock her up and Kevin's like listen guy saying that is like saying I don't want to give you the summons but my sergeant made ya.” According to Scott, Respondent Carney was “really fucking twisted. He's like wrong with these fucking guys . . . I can't believe this [bull] . . . it just turned into a big fucking issue with them.”

Scott told Rudden that he had to “get those fucking guys[’] names. . . . anyway just because eventually [they] did the right thing after being the biggest dicks my guy want[.]s to buy[][][']em a couple of bottles.” Respondent Carney mentioned to Scott that the on-duty officers from the 46 Precinct were “the biggest dicks he's ever fucking, you know.” Rudden asked Scott if one of them was named Guzman. Scott thought this might be correct, asking “they have like three and a half years on maybe?” Rudden concurred that this might be him.

B. The Person B-Respondent Carney Calls

In the first call (DX 2a), Person B railed at Respondent Carney that he threw away her “only piece of blunt.” Respondent Carney replied that he would look for it in the garbage (he subsequently testified that he would take his household trash to his command and throw it out in the dumpster so as to avoid having to sort for recycling). In the second call (DX 2b), Respondent Carney advised Person B that if he threw it out, he did so accidentally. In the third call (DX 2c), he told her that if he found it, he would bring it back. He told her that he was an hour and a half late

for work because of the search. When she exclaimed, "The only fucking little piece that I had," he answered, "Person B are you kidding[,] I pay for you[,] I paid for that[,] I wouldn't throw it out on purpose." Respondent Carney also advised Person B to "call up Steve across the street and get one," but also told her to "stop using."

In the fourth call (DX 3a), Respondent Carney told Person B that he remembered seeing the blunt, and if he took it, it was in his car. He complained that she constantly berated him, "Oh, what time you comin' home? I wanna go smoke." In the fifth call (DX 3b), he told her that he smelled marijuana, asked her about a "huge amount" of marijuana and questioned how she had money to buy "four bags of weed."

In the sixth call (DX 5a), Respondent Carney told Person B that another officer made an arrest and the arrestee reported that he had information on an officer's wife who was selling marijuana near what Respondent Carney implied was Person B's block. Respondent Carney said that the arrestee was talking about him, knew his name, and might have been supplying Person B with marijuana. Respondent Carney told Person B that the officer now had to call IAB and asked her, "Are you out of your fucking mind?" Person B denied that she was selling marijuana, but Respondent Carney warned her that he likely was going to face disciplinary procedures.

On a call with one of the women (DX 6c), Respondent Carney told her that he had been to her twice before and mentioned locations in the Bronx where she worked. She indicated that she remembered him, although he later said that he did not recall how much he paid her in the past. On another call (DX 7b), the woman admonished Respondent Carney for having stood her up twice in the past.

Lieutenant Javad Valad

Valad previously was assigned to IAB. He investigated Respondent Guzman regarding an incident that occurred on November 14, 2011, when the Court Monitoring Unit found Respondent Guzman to be unprepared for Bronx Traffic Violations Bureau (TVB). Respondent Guzman allegedly had neither his summons nor Activity Log when he appeared to testify. Respondent Guzman issued the summons on April 9, 2011, for running a red light.

As part of his investigation, Valad obtained an audio recording of Respondent Guzman's TVB testimony (see DX 8 & 8a, recording and transcript). Respondent Guzman requested an adjournment but was denied. The case was dismissed.

Respondent Guzman admitted to Valad in an interview that he made a mistake. He explained that he appeared at TVB without the summons or Activity Log because he recently had been transferred to the Manhattan Court Section and failed to retrieve the documents from the 46 Precinct, his prior command. Respondent Guzman stated that he generally received two weeks' notice before a court date. Upon review of Respondent Guzman's Activity Log (DX 9), Valad claimed, he found no entry relating to the issuance of a summons on April 9, 2011.

On cross examination, Valad acknowledged that "2 B's red light" was written in the margin of Respondent Guzman's Activity Log for April 9, 2011. This was a reference to two 'B,' or moving violation, summonses that Respondent Guzman issued for running red lights.

November 14, 2011, was the fourth time that Respondent Guzman appeared at TVB without the proper documentation.

Valad admitted that Respondent Guzman was a "fairly active cop." He never gave Valad any indication that he intentionally went to court unprepared.

On re-direct examination, Valad testified that in two prior official Department interviews before November 14, 2011, for prior cases, he instructed Respondent Guzman to bring his Activity Log and relevant summonses with him when testifying at TVB. Respondent's three prior cases were resolved with a single command discipline.

Respondents' Case

Respondents both testified on their own behalf.

Respondent Guzman

Respondent Guzman had been a member of the Department for six years and previously was assigned to patrol in the 46 Precinct. He did that for approximately four years. He was fluent in Spanish and lived in [REDACTED] with his wife and two children.

Respondent Guzman had a bachelor's degree in chemistry from Hunter College and previously worked as a hospital lab technician. He became a police officer because "[i]t suits my personality. . . . I'm on point with things that I do . . . and I do things by the book." He had made approximately 600 arrests, 150 of which were for DWI. He assisted other officers with their DWI arrests on approximately 400 other occasions. He received training both in the Police Academy and afterward with respect to DWI cases, and he had a reputation in his command for being active with DWI arrests. He also received five awards from Mothers Against Drunk Driving.

Respondent Guzman testified that he and Maria were acquaintances from work but were not friends and did not socialize together. They worked together less than three or four times.

Respondent Guzman arrived at the scene of the February 21, 2010, car accident within five minutes of the accident. He saw a BMW with two of its wheels on the median. Nobody

was in the BMW. He also saw one other car and an ambulance. The driver of the other vehicle that was involved in the accident was receiving medical treatment and required a neck brace. He only had a learner permit, not a driver license, and Respondent Guzman issued him a summons (RX B) for unlicensed operation.

There were four or five "pedestrians" at the scene, mostly Hispanic females. Respondent Guzman asked the women if they were all right, and they replied that they were fine. To Respondent Guzman, the women did not appear to have been in an accident. He asked which of them had been the driver, and one of the women, i.e., Person A, gave him her license. He asked her for insurance and registration, and she returned to the BMW.

Meanwhile, Respondent Guzman went to the driver of the other vehicle, got his registration and insurance, and started to prepare the paperwork for the accident. He noted on the PAR that the road surface condition was dry and that the lighting conditions were "dark road lighting," meaning that it was dark out but there were lights on the road. That was when he observed two men, one of whom identified himself as Recio and the other as a Patrolmen's Benevolent Association (PBA) delegate from the 48 Precinct, approach the scene. The delegate was not Respondent Carney. This delegate was about six feet tall and Respondent Carney was much shorter. The men parked their car on the opposite side of the expressway and jumped the median on foot. They were dressed in plainclothes.

Respondent Guzman had been at the scene for five minutes when Recio arrived. Recio told him that he had been the driver of the BMW, and Recio gave him his license, registration and insurance upon request. Recio described the accident to him. He provided so much information about the accident that Respondent Guzman gave him a piece of paper to write down

his version of the incident. The details that Recio provided were consistent with Respondent Guzman's observations.

Respondent Guzman did not speak to Recio or Respondent Carney on the phone that day. He did not see Respondent Carney at the scene. Respondent Guzman did not recognize Ramos from his testimony at trial.

Although Respondent Guzman knew Recio at the time of trial from their modified-duty assignment in the Manhattan Court Section, the car accident was the only time before that that they met. He did not consider Recio a friend.

It took ten minutes or less for Respondent Guzman to complete the PAR. Neither Recio nor Person A ever told Respondent Guzman that they were a couple. Recio never asked him to falsify any type of report. Respondent Guzman did not speak to the individual that identified himself as a PBA delegate.

Respondent Guzman knew Rudden as the assistant PBA delegate for the 46 Precinct. They worked different tours and saw each other in passing. They were not friends.

Respondent Guzman asserted that he did not see signs of intoxication on anyone at the scene. He based this determination on his training and experience. Nobody had bloodshot or watery eyes, was unbalanced on the feet, or spoke incoherently. Respondent Guzman did not see any open containers in or around the BMW.

Respondent Guzman was at the scene for a total of 15 or 20 minutes. Although Maria told Respondent Guzman that he was looking to make an arrest, he denied that they discussed arresting anybody as a result of the accident.

Respondent Guzman extended Recio the courtesy of showing him the PAR before submitting it. Recio asked for this favor and gave Respondent Guzman his telephone number.

Respondent Guzman called Recio two days later to arrange a meeting. They met near the Bronx Zoo. Respondent Guzman showed Recio the PAR, and Recio said the document looked okay. Respondent Guzman did not know why Recio wanted to review it. Recio did not give him anything in return for extending this courtesy. The meeting lasted less than a minute. At no point did Respondent Guzman offer to falsify the PAR as a favor to Recio and Recio did not ask him to do so.

Respondent Guzman admitted that he was unprepared when he went to TVB on November 14, 2011. He explained that three or four months earlier he was placed on modified duty and transferred from the 46 Precinct to the Manhattan Court Section. He left his summonses and Activity Log at his old command. Even though he had two weeks' notice of his court date, he did not return to the 46 Precinct to retrieve his paperwork.

On cross examination, Respondent Guzman agreed that he took pride in his work. He wanted to be thorough and was careful not to make mistakes.

Respondent Guzman agreed that the accident was pretty bad, but there was only front-end damage to the BMW.

Respondent Guzman testified that when arriving at the scene of an accident where he suspected alcohol might be involved, the first thing was to determine if the possibly-impaired suspect was the driver. He asserted, "I need to find the witness or someone that can pinpoint the person behind the wheel. I cannot put the person behind the wheel because I did not observe the person driving, so I cannot arrest him." Once the driver was identified, he would administer a portable breathalyzer test at the scene. There were cases where he was not sure if someone was drunk and he performed a breathalyzer test to see if the person was in fact impaired.

Respondent Guzman admitted that a breathalyzer test also would be performed where he and his partner disagreed on whether somebody should be arrested for DWI. Respondent Guzman admitted stating in his official Department interview (DX 11, transcript) that Maria told him at the scene that Maria thought Person A was intoxicated.

Based on his experience, Respondent Guzman disagreed with Maria's determination. He did not give Person A a breathalyzer test. Maria did not tell Respondent Guzman that he thought Person A was the driver of the BMW. According to Respondent Guzman, Person A gave him her license but never said specifically that she was the driver.

In Respondent Guzman's official interview, the investigator asked, "When you went up to this car here, the female said I was driving," and Respondent Guzman replied, "Right." Respondent Guzman contended that his response meant he was listening to the scenario the investigator was describing, not that he meant he was agreeing those were the facts.

The February 21, 2010, accident was the only occasion when Respondent Guzman had an individual indicate that she was the driver only to have another individual subsequently come forward to identify himself as the driver.

When Recio approached him and told him that he was the driver, Respondent Guzman did not question it. There were several witnesses at the scene, but Respondent Guzman did not interview any of them to see who the actual driver was. Recio was the only member of the service that Respondent Guzman spoke with at the scene.

This case was the only time that Respondent Guzman allowed someone to review a PAR before turning it in, though it was not uncommon for him to get the telephone numbers of the parties in an accident so that he could get follow-up information if necessary.

Respondent Guzman admitted that he appeared at TVB without his Activity Log and summonses on three occasions prior to November 14, 2011. On each of those occasions, he repeated this misconduct even after receiving instruction to report to court prepared.

On re-direct examination, Respondent Guzman testified that when he arrived at the scene the BMW was positioned approximately 25 feet in front of the other vehicle that was involved in the accident. The entire front of the other vehicle was damaged.

Recio was the only person at the scene that said, "I was driving the vehicle." Respondent Guzman claimed that Recio appeared to be sincere.

On re-cross examination, Respondent Guzman confirmed that Recio did not appear to be injured either.

Upon questioning by the Court, Respondent Guzman testified that Person A did not speak to him at all. She just handed him her license.

Respondent Guzman believed that the BMW's driver's airbag was deployed, though he made no indication of it on the PAR.

Respondent Carney

Respondent Carney, a 19-and-a-half-year member of the Department, was assigned to the 48 Precinct. He admitted "fixing" approximately ten summonses as a union delegate, a post he assumed in September 2009. Of the summonses he fixed, maybe one of them was for a personal friend or family member. He fixed several of the summonses at the request of supervisors in the 48 Precinct. It was his understanding that if he did not assist the supervisors with their requests, they might change his tours and make it difficult for him to take days off. In addition, he probably would be labeled "a rat." Respondent Carney was told at the Police Academy that

members should contact their delegates when family members received a summons. He believed this was his responsibility as a delegate when approached by other members.

Respondent Carney first met Person B in 2004 at a club. To his knowledge, Person B was not involved with marijuana at the time. In fact, she was enrolled at John Jay College of Criminal Justice at the time. She never mentioned marijuana, smoked it in his presence, or asked him to obtain it for her.

Respondent Carney and Person B started living together in 2006. Their son was born that year. He did not suspect that Person B was a user of marijuana until 2008 or 2009. What made him suspicious were empty bags and the smell of marijuana when he came home from work. This made him very upset and angry.

Respondent Carney never saw Person B smoking marijuana in his presence and he never supplied her with it. One time, she called him to complain that he took out with the garbage a paper towel or napkin containing a small piece of marijuana. He told her that he would look through the garbage but did not actually do so.

In an attempt to get Person B to quit marijuana, Respondent Carney once fabricated a story in which an arrestee “alleged that members of the service’s husband was married to someone who was getting high.”

Respondent Carney could not even have a conversation with Person B because she would just argue with him. He spoke with a PBA trustee to get advice on the matter. The trustee advised him to let it go or he would get in trouble. Respondent Carney contended that he would have arrested Person B had someone told him to do so.

In the summer of 2010, Respondent Carney staged an intervention in which he assembled family members and friends at his residence to confront Person B about her marijuana use. Person B

responded by screaming and yelling. She left the residence after trying to hit her grandmother and stayed away for weeks. She eventually returned but stayed only until she found somewhere else to go. Respondent Carney wanted her out of the house because he did not condone her actions and did not want to get in trouble at work.

Respondent Carney admitted placing multiple telephone calls to various women seeking sexual services in exchange for currency. This was when his relationship with Person B was “horrible. The worst it could be.” He was not “thinking straight at the time.” Of the phone calls he made, he claimed, there was “maybe one time” that he actually followed up and met the woman.

Respondent Carney and Person B no longer were together at the time of trial.

Respondent Carney was good friends with Recio and Ramos. They socialized together outside of work and had been to each other’s homes.

On February 21, 2010, Respondent Carney was at a 24-hour pharmacy getting medicine for his son, who was sick. He received a telephone call from Recio at 0300 or 0400 hours.

Respondent Carney testified that “numerous things” fell into his realm of responsibility as a delegate. “You’re like a counselor, you have to listen to people with all their problems. . . . And a lot of times I just have to show up, whether there was a family argument or an accident or anything, any problems they had.”

When Recio called Respondent Carney to inform him of the accident, Recio told him, “This bitch crashed my car. And she might get arrested.” When Respondent Carney asked what she might get arrested for, Recio at first said that he did not know but then said “maybe DWI.” Respondent Carney drove to the accident scene, arriving there 15 or 20 minutes after he received Recio’s call.

The day in question was not the first time that Respondent Carney responded as a delegate to the scene of an accident. His role at accident scenes was to make people feel better. "Basically as a delegate, you just hold somebody's hands. You can't control the situation, you're off duty." But when asked if he went to the accident as a delegate or a friend, he replied, "I believe those guys would have called me if I wasn't a delegate, so I would have went any way."

When Respondent Carney arrived, he observed a marked police vehicle, Recio's vehicle, and Ramos's vehicle parked in front of that. The first person he spoke with at the scene was Ramos. Ramos brought him to Person A, whom Respondent Carney knew as someone Recio "used to mess around with." Respondent Carney asked Person A if she was all right. Person A just nodded in response because she did not speak English. While he was talking with Person A, Ramos walked away and Recio was talking with the tow truck driver. When Ramos returned, he told Respondent Carney that "everything is good."

Respondent Carney never had met Respondent Guzman before trial and had no independent recollection of seeing him at the scene. He did not have an independent recollection of which officers were in the Department vehicle. At no point while at the scene did Respondent Carney approach the Department vehicle or speak with uniformed officers. Nobody ever approached him with respect to Person A's possible intoxication. The only people he spoke with while there were Ramos and Person A.

Respondent Carney did not speak to Recio about why he was summoned to the scene. It was his understanding that "whatever was worked out had been worked out" prior to his arrival. He remained at the scene for five or ten minutes. At no point did he see Recio or Ramos approach the marked Department vehicle. Respondent Carney, Recio, and Ramos all left at about the same time.

Respondent Carney had a conversation with Recio about the accident a couple of days or perhaps weeks later. That conversation took place in the precinct locker room. Recio told Respondent Carney that "he put himself as the driver." Recio was laughing at the time, and, Respondent Carney contended, he did not know if Recio was being serious. Respondent Carney knew Recio had not really been the driver, but he admitted that he did not ask Recio any follow-up questions or notify IAB. He did not notify IAB because he did not know if Recio was being serious. Respondent Carney told Recio that it was a stupid thing to do, and Recio laughed in response.

On cross examination, Respondent Carney stated that he considered ticket fixing to be one of his unofficial roles as a delegate. If he could help, he would pull summonses or get someone else to pull them so that the summonses would "get taken care of." He personally knew just one or two of the people whose summonses he handled. The others were people he had never met. Respondent Carney agreed that being a delegate was a voluntary position.

Respondent Carney confirmed that Recio was upset during the February 21, 2010, telephone call.

As far as Respondent Carney knew, he was the only union delegate at the scene.

Respondent Carney testified that while at the scene of the accident he spent approximately five minutes within close proximity of Person A During that period, she looked a little nervous but did not appear to be intoxicated. He did not smell alcohol on her. She did not look disheveled or have bloodshot and watery eyes. She did not tell him that she had been the driver of the BMW.

Ramos did not expand on what he meant when he told Respondent Carney that “everything was good.” Respondent Carney did not know where Ramos was coming from or who he had been with just prior to making that statement.

Respondent Carney confirmed that he told Scott, his co-delegate, about the accident. Respondent Carney was a new delegate and Scott had been doing it for over six years. They talked all the time. Respondent Carney stated in his official Department interview that Scott “tends to blow things out of proportion.” Although Respondent Carney could not recall the complete extent of his conversation with Scott, he never told Scott that he spoke with uniformed officers at the scene. Respondent Carney did not provide Scott with Respondent Guzman or Maria’s name because he did not know those names at the time. He did not recall telling Scott that one of the officers at the scene said, “It’s not me, it’s my partner who wants to lock her up.” He admitted that Scott did not use language like calling people “dicks.”

At the time that Respondent Carney’s conversations with Person B were being recorded, they were living together on and off. On one occasion he observed bags of marijuana in Person B’s jacket pocket inside the house.

Respondent Carney lied to Person B when he told her that he looked through the garbage because she was not a “normal person [he] could deal with.” From the time he met her she was on medication for [REDACTED]. Respondent Carney “had to lie to her to appease myself because she showed up at my job numerous times trying to get me in trouble. So I would tell her anything I could, just so I could get into work without her calling my phone or calling the precinct.” He told her other “bizarre stories” as well.

Respondent Carney had heard that phones were being wiretapped and assumed that his was one of them.

On re-direct examination, Respondent Carney testified that he never spoke to Rudden about the accident. Respondent Carney claimed that none of the comments Scott made to Rudden were accurate as to Respondent Carney's role in responding to the accident. He never told Scott that he "took care of a cop's girlfriend who was DWI" or that he interfered with a lawful DWI arrest. He never inquired of Scott about a reward bottle of liquor. The reason he spoke with Scott about the accident at all was because Scott had been a delegate for a longer time, and Respondent Carney wanted to know if his own handling of the situation was correct. Respondent Carney did not know if Scott spoke with Recio or Ramos about the accident, but Scott knew both officers.

Upon questioning by the Court, Respondent Carney testified that he did not identify himself as a member of the service to any of the on-duty officers at the accident scene. He was approximately 50 feet from the marked Department vehicle, but he did not have a specific recollection of the officers.

FINDINGS AND ANALYSIS

Case Nos. 2011-5913 (Respondent Carney) & 2011-5792 (Respondent Guzman)

In the early morning hours of February 21, 2010, Police Officer Orlando Recio, assigned to the 48 Precinct, had recently gone off duty and was at a bar with his friend and colleague Police Officer Jose Ramos. Recio earlier had lent his vehicle more particularly his father's BMW SUV to Person A, a woman with whom Respondent was having a casual sexual relationship. Recio received a phone call, informing him that Person A had gotten into a car accident on the Major Deegan Expressway. Recio and Ramos drove to the scene of the accident in Ramos's car.

Recio testified that he was worried about Person A and his vehicle, but also more specifically about certain consequences. Because Person A was not listed as a driver on the vehicle's insurance policy, and because it was really his father's car, Recio was worried that the insurance costs would rise. He was equivocal about the possibility that Person A would be arrested for DWI. He stated that he overheard the possibility that she would be arrested.

Recio realized that he needed help. He called his union delegate and friend, Respondent Carney, and requested that he come to the scene. Respondent Carney did so.

The on-duty officers that responded to the accident were Police Officer Juan Maria and Respondent Guzman, assigned to the 46 Precinct. Maria testified that Person A appeared to be drunk. Respondent Guzman, however, testified that she did not appear intoxicated.

Recio arrived on the scene after the accident took place. Both he and Respondent Guzman admitted this. Recio approached Respondent Guzman and stated that he was driving the BMW. Once Respondent Carney arrived, Recio left Respondents to speak to each other while he removed personal property from the car. Respondent Carney returned to Recio and told him, "You're good" – or asked him this, saying, "You're good?"

Maria indicated that before Recio arrived, Person A was talking on the phone, then Respondent Guzman did so as well. When Maria indicated to Respondent Guzman that he suspected Person A of DWI, Respondent Guzman demurred, noting that her boyfriend was a member of the service and was a good guy. When Recio arrived, Respondent Guzman and Recio spoke amicably. Maria did not see Respondent Carney at the scene.

Respondent Guzman testified that he arrived at the accident scene and observed two vehicles, one occupied by a male black driver and the other a BMW, around which several other women were standing. Respondent Guzman approached the women and asked, in English, who

was driving (there was testimony at trial that Person A did not speak English). In response, Person A handed over her license and related paperwork but did not state that she was the driver.

According to Respondent Guzman, five minutes later, a vehicle approached from the other side of the highway and two people got out: Recio, and a very tall male who identified himself as a 48 Precinct PBA delegate but who Respondent Guzman denied was Respondent Carney. Respondent Carney was relatively short; the delegate that arrived, according to Respondent Guzman, was approximately six feet tall. Recio identified himself as a member of the service and said that he was driving the BMW at the time of the accident. Respondent Guzman claimed that he accepted this representation as true.

Respondent Carney admitted that he came to the scene of the accident at Recio's request, but only to lend support to his friend, fellow officer and constituent. He did not interact with Respondent Guzman, and although he remembered seeing a marked Department vehicle, he did not recall Respondent Guzman specifically. While Respondent Carney spoke to Person A, Ramos walked away and Recio talked to the tow truck driver. Whereas Recio had testified that Respondent Carney came back and told him, "You're good" or "You're good?," Respondent Carney testified that it was Ramos who returned and said, "[E]verything is good."

Respondent Guzman testified that because he believed Recio was the driver, he listed him as the driver on the police accident report. Later, he met with Recio to go over the PAR with him and to ensure that it was correct. He had never done this before or since for any other driver.

The first specification against Respondent Guzman charges him with the crime of Falsifying Business Records in the Second Degree (Penal Law § 175.05 [1]) in that he fraudulently listed Recio as the driver on the PAR, knowing that Recio was not the actual driver. Respondent Guzman was at the scene for some time with Person A before Recio arrived. When

Respondent Guzman asked Person A who was driving the car, she gave him her driver license. Respondent Guzman's argument that this did not necessarily mean she was the driver is preposterous. From either the context of the interaction or limited English knowledge, Person A understood that Respondent Guzman was asking who was driving. In any event, the operative question is what Respondent Guzman thought Person A's response meant, and from his question the reasonable meaning was that she was the driver.

Thus, Respondent Guzman knew that Person A was driving the BMW. It follows that he could not have believed that Recio was the driver, ludicrous as that would be even putting aside Respondent Guzman's interaction with Person A. Recio was not on the scene when Respondent Guzman arrived and got there five minutes later. Believing that he was the driver would have required believing that Recio got into the accident, left by unknown means and for unknown reasons – he was not injured – and then decided to come back, again for unknown reasons. Respondent Guzman did not address the fact that this meant Recio had committed the offense of leaving the scene of an accident. There is no way to credit Respondent Guzman's testimony that he honestly believed Recio was the driver.

Furthermore, Respondent Guzman's actions were an attempt to deceive others into believing that Recio was the driver. Recio testified that he wanted to make sure that his insurance company thought he was driving, and he admitted receiving \$14,000 in insurance payments.

As such, Respondent Guzman is found Guilty of Specification No. 1.

Respondent Carney is not actually charged with any misconduct relating to the accident scene itself. Rather, the first specification against him charges that he impeded the investigation into the affair by lying at his official Department interview. Respondent Carney told the

investigator that he did not speak to any on-duty police officers at the scene; at most, he had no recollection of speaking to them (see DX 10, transcript of official Department interview).

Respondent Carney claimed that the only person to state that Respondent Carney spoke to the responding officers was Recio, an admitted liar and scot-free committer of insurance fraud. Not even Maria, the witness whom the Department argued was the most neutral, acknowledged Respondent Carney's presence. In fact, however, Ramos testified that Recio and Respondent Carney spoke to Respondent Guzman for as long as five minutes.

Recio already had pleaded guilty to charges and specifications in exchange for a recommended penalty of entering into a vested-interest retirement agreement with the Department, 60 suspension days to be served and placement on one year of dismissal probation. Although the agreement did not require that Recio testify at Respondents' trial, counsel for both sides noted that Recio still was a member of the Department and was obligated to testify at a Department hearing. The Advocate's stated intention at the time of the plea was not to present the recommendation to the Police Commissioner until the instant trial was "completed," that is, Recio would be a member of the Department at the time of trial, obligated to testify, without knowledge that his plea had been approved. Recio's case has not yet been submitted to the Police Commissioner.

On the other hand, Ramos had little motive to implicate Respondent Carney falsely, as they were friends and, unlike Recio, Ramos faced no discipline for his role in the incident.

Another problem for Respondent Carney is that other persons were overheard on wiretaps talking about the incident in a way that suggested Respondent Carney's substantial involvement. Police Officer Christopher Scott, another delegate at the 48 Precinct, called Police Officer John Rudden, a delegate at the 46 Precinct. Scott's telephone was being tapped to investigate his

possible involvement in the Bronx ticket-fixing scandal. Scott currently is under indictment in that case in Supreme Court, Bronx County. The Department gave no reason for not calling Rudden, still a member of the Department and assigned to the 46 Precinct, as a witness.

Respondents objected on hearsay grounds to the introduction of the Scott-Rudden wiretap.² The statements were introduced to prove that Respondent Carney did in fact speak to the on-duty officers because Scott knew certain information that only could have come from Respondent Carney and that indicated Respondent Carney spoke to the officers at the scene. Hearsay is admissible in this forum if it is sufficiently relevant and probative. See People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985); Matter of Grossman v. Kralik, 217 A.D.2d 625, 626 (2d Dept. 1995); cf. Matter of Andruszkiewicz v. Doherty, 84 A.D.3d 595 (1st Dept. 2011) (hearsay testimony of Sanitation Department investigator, who obtained statement from woman that tipped employee for accepting trade waste, was sufficiently relevant and probative to demonstrate that employee accepted the gratuity). Here, Scott's account was corroborated in various ways by the live testimony of Recio, Ramos and Maria. Cf. Grossman, 217 A.D.2d at 626 (memorandum of judge concerning court attendant's dozing off during proceedings was corroborated by other evidence).

Scott told Rudden that on the morning of February 21, 2010, a 48 Precinct officer's "girl" or fiancé got into an accident with the officer's vehicle. This date was accurate. According to Scott, the on-duty officers were going to arrest the woman for DWI. Scott expressed that she was "fucked up," but no one was injured, including her passengers.

² Respondent Carney moved in Supreme Court to bar use of the wiretaps in the instant trial on Fourth Amendment grounds. The motion came after the trial already had begun, and this Court granted his request, joined by Respondent Guzman, for an adjournment so that Supreme Court could decide the matter. Supreme Court denied the application.

In Scott's view, the officers should have written up the incident as a simple vehicular accident. But, according to Scott, Respondent Carney talked to one of the officers, who said "you know it's not me it's my partner you know who wants to lock her up." Respondent Carney responded that this was like one officer telling another that he did not want to issue a summons but his supervisor was making him do so. Respondent Carney was upset about the matter and told Scott that the on-duty officers acted like "the biggest dicks."

The on-duty officers, according to Scott, nevertheless "did the right thing" in the end and Respondent Carney got their names. The officer whose car was involved wanted to buy the officers "a couple of bottles" as a show of thanks. Rudden thought one of them might be named Guzman, and Scott thought this sounded right. The officer named Guzman might have about three and a half years of experience with the Department, Scott said, and Rudden concurred.

Scott gave an account that, if not made up out of whole cloth or wildly exaggerated, only could have come from someone at the scene. Although Respondent Carney claimed that Scott was prone to blow things out of proportion, he offered no reason why Scott would have wanted to lie to Rudden. Scott had nothing to gain by stating Respondent Carney's involvement. If he wanted to get Rudden to find out the 46 Precinct officers involved, he could have just mentioned the accident and the avoidance of an arrest without implicating Respondent Carney. He even could have said that he learned about Recio and Ramos's involvement from Respondent Carney.

Instead, Scott said that the officers were going to arrest Person A until Respondent Carney persuaded them not to do so. It was Respondent Carney, according to Scott, who told the more-cooperative officer that it was offensive to arrest Person A just because his partner wanted to. Respondent Carney's interaction with the officers was to the extent that it left him with the impression that they were "dicks." Respondent Carney admitted at trial that Scott himself did

not use that type of language, implying that he was quoting someone else. But Respondent Carney's appeals worked: Person A was not arrested.

It is also worth noting that the context of the recording corroborates the involvement of Respondent Carney. When asked by Rudden if one of the officers was "Guzman," Scott said, "Guzman, you know what I think so they have like 3 and a half years on maybe?" Because the off-duty officers did not know the on-duty officers prior to the incident, Scott's remark about "Guzman"'s three and half years of service with the Department indicates that someone at the scene asked the officer how many years he had on the job. It is possible that this question could have arisen when Respondent Carney, a union delegate with almost 20 years of service, was trying to persuade Respondent Guzman not to arrest Person A by telling him that he was expected as a junior officer to get with the program. Additionally, Scott indicated that Respondent Carney felt the officers were being "dicks" (Ramos testified that he was told this by Recio). Scott's comment about Respondent Carney's reaction to the officers indicates that a delegate was needed to convince them not to act like dicks and to do what they were told. All of this fits in with the events described by the witnesses.

Respondent Carney suggested that Recio or Ramos could have told Scott about the incident. These officers, however, had no reason to go to Scott. They did not seem to be bothered at all about what they did, and as they testified, from their perspective, "everything was good." Respondent Carney, on the other hand, spoke to Scott on a regular basis, as they were co-delegates and had to know what was going on with their constituents.

In sum, the Department proved by a preponderance of the evidence the falsity of Respondent Carney's denial at the official interview that he spoke to the on-duty officers. The

remaining question is whether that false denial impeded the Department's investigation of the incident.

There is no sign that the denial caused investigators to take any further steps. In fact, one of the investigators stated in the interview that Respondent Carney's was the final one. Cf. *Case No. 84828/09*, p. 22 (Jan. 11, 2011) (after officer denied knowledge of boyfriend's criminal history, "There is no evidence that the investigators took any steps after that interview that they would not otherwise have taken").

Here, however, Respondent Carney did not merely deny misconduct, as it is not misconduct for a delegate to respond to an off-duty incident and speak to the on-duty officers. Rather, Respondent Carney affirmatively created a false version of events by making it appear that he had nothing to do with the interactions between the off- and on-duty officers. Cf. *Case No. 86151/10*, p. 20 (Aug. 10, 2011) (officer "impeded the investigation by continuing a false story designed to lead investigators away from the true reason he wanted [a license] plate run"). As such, Respondent Carney is found Guilty.

The second specification against Respondent Guzman charges him with the crime of official misconduct, in that, "with the intent to obtain a benefit or deprive another person of a benefit, committed an act relating to said public servant's office but constituting an unauthorized exercise of said public servant's official functions, knowing that such act was unauthorized or he knowingly refrained from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office." The Department stated that the specification was a reference to Respondent Guzman allegedly "quashing the DWI" of Person A.

The evidence of Person A's intoxication varied. Maria said that she was intoxicated, with watery eyes and the smell of alcohol. Respondents denied this. Recio was more equivocal, stating that he did not think she was intoxicated but was concerned that she would be arrested.

There is objective evidence, *supra*, that Respondents lied about Person A being the driver (Respondent Guzman) and speaking to the on-duty officers (Respondent Carney). There is no reason to credit their self-serving assertions of Person A's sobriety. Maria, on the other hand, had no ax to grind by asserting that Person A was drunk. If anything, he was admitting his own misconduct by admitting that he failed to report Respondent Guzman's misconduct.

Other evidence supports the conclusion that Person A was intoxicated. Maria testified that Respondent Guzman was on the phone before Recio arrived, and that Respondent Guzman's determination not to arrest her was made before Recio arrived. That determination was confirmed once Recio arrived and spoke to Respondent Guzman. If Respondent Guzman truly believed that Person A was sober, Recio's presence should not have "confirmed" anything. It should have been irrelevant, but Maria testified that it influenced Respondent's Guzman's decision.

Furthermore, Scott's call to Rudden indicated that Person A was drunk. Rudden asked if she was "banged up," i.e., badly injured. Scott responded that she was "fucked up." Scott must have misheard Rudden because there was no indication from any witness at trial that Person A was injured, much less badly injured to the extent that someone would describe her as "fucked up." Rather, Scott must have meant that term's more common meaning: she was drunk. Scott also indicated to Rudden that Respondent Guzman was going to arrest Person A but Respondent Carney persuaded him not to.

The Department, therefore, proved by a preponderance of the evidence that Respondent Guzman thought Person A was drunk and failed to initiate an arrest. This constituted official misconduct. See Case No. 81877/06 (July 6, 2006) (officer declined to make arrest in exchange for individual to have sex with him). As such, Respondent Guzman is found Guilty of Specification No. 2.

The third specification against Respondent Guzman charges that he impeded the Department's investigation by making, during his official Department interview "false or misleading statements . . . regarding what occurred at the scene of" the accident. In its opening statement, the Department alleged that at the interview (DX 11), Respondent Guzman "completely denies intentionally putting false information in the Accident Report."

The problem with this is that the statement apparently never was made. Although Respondent Guzman spoke at length about the events and how he prepared the PAR, the investigators never asked whether his statements in the PAR were intentionally false. For there to be a false denial, there first must be a question posed. In any event, the supposed denial may well fall within the safe-harbor provision of Patrol Guide § 203-08, Note, ¶ 3 (false-statement charge will not lie for mere denials of an administrative charge of misconduct). As such, Respondent Guzman is found Not Guilty.

The first specification against Respondent Carney charges him with failing to report the misconduct of Recio, both as to the actions taken by Recio at the accident scene and falsifying the PAR. Respondent Carney knew that Recio had committed misconduct at the scene because Recio's need to have himself falsely named as the driver was the reason Respondent Carney was there to begin with. Moreover, the Court cannot credit Respondent Carney's claim that he was unsure if Recio was serious when Recio subsequently said he put himself down as the driver on

the PAR. In light of the evidence that Respondent Carney helped this fraud occur, the claim at trial was false. Therefore, Respondent Carney is found Guilty of Specification No. 1.

Case No. 2011-6556

The first specification in this case relates to Respondent Carney's life outside the Department. The Scott-Rudden wiretap led investigators to tap Respondent Carney's phone. This revealed problems in his relationship with Person B, the mother of his child. She was a user of marijuana, although that was not, according to him, the case when their relationship began. The wiretaps (DX 2-5) support Respondent Carney's testimony that Person B was volatile and difficult to deal with. He testified that he tried to scare Person B into stopping by telling her that an arrestee had informed investigators that a police officer's girlfriend was selling drugs. Respondent Carney even tried staging an intervention with the help of her family, but it failed. At one point, he admitted, he found bags of marijuana in her jacket pocket, inside the house.

The specification alleges that Respondent Carney, "having observed that marihuana was being used in his household," failed to take police action. Respondent Carney asserted that he would have arrested Person B had someone told him to do so. Counsel conceded on summation that "he probably exercised poor judgment and should have had her arrested or notified the police." Respondent Carney contended, however, that he did not "observe" Person B "using" marijuana because he never saw her smoking it with his eyes.

Respondent Carney admitted smelling marijuana, however, when he came home from work, and finding the bags as well. He attributed this to Person B. The Court gives to "observe" its common meaning: "to see, watch, perceive, or notice" (Random House Dictionary 2013, via dictionary.com [June 19, 2013]). In that light, Respondent Carney perceived or noticed that

Person B was using marijuana. In light of his concession that he thus would be obliged to take police action, and because he failed to do so, he is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent Carney was appointed to the Department on August 30, 1993. Respondent Guzman was appointed on July 10, 2006. Information from their personnel folders that was considered in making these penalty recommendations is contained in attached confidential memoranda.

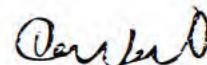
Respondents have been found Guilty of serious misconduct arising from a vehicular accident. An off-duty officer, Recio, had a relationship with a woman, Person A. He lent her his BMW and she promptly got into an accident with it in the overnight hours of Saturday into Sunday. Fearful of the insurance consequences and knowing that she might be intoxicated, Recio rushed to the scene. He also contacted his delegate, Respondent Carney. The responding on-duty officers were Maria and Respondent Guzman. Although Maria wanted to arrest Person A for DWI, Respondents spoke with each other first. Person A was not arrested and Recio was placed on the accident report as the driver. Respondent Carney later related the events of the evening to his co-delegate, Scott, because Recio wanted to give "a couple of bottles" (presumably, of liquor) to Maria and Respondent Guzman for their cooperation. Scott called Rudden, Maria and Respondent Guzman's delegate. Scott's phone was being wiretapped in relation to the Bronx ticket-fixing cases, however, and the matter became known.

Respondent Carney has been found Guilty of lying to investigators in this matter and Respondent Guzman has been found Guilty of falsifying Department paperwork fraudulently for

Rocio's benefit. Separately, Respondent Carney also has been found Guilty of ticket-fixing and Respondent Guzman of failing inadvertently to bring a necessary summons to traffic court. Respondent Carney also has been found Guilty of failing to take police action regarding marijuana use by the mother of his child. Additionally, he admitted calling several women working as prostitutes to arrange assignations.

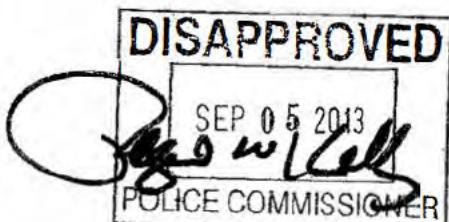
In many ways, this is a sad case. Two otherwise productive and responsible police officers corrupted themselves out of a misplaced sense of duty to help a fellow officer's somewhat-girlfriend avoid a night in jail and the officer avoid a higher insurance payment. But sadder still is that Respondent Carney, a longtime veteran, used his status as a delegate and elder to persuade a much more junior officer, Respondent Guzman, into joining in on that corruption. For this misconduct, the Court recommends that both Respondents be DISMISSED from employment with the Department. See Case Nos. 77250-51/01 (Aug. 9, 2002) (termination for officers who, *inter alia*, visited brothels and refrained from taking police action so that they could use their services, then lied about the matter during official interviews).

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

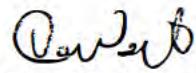
From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEVIN CARNEY
TAX REGISTRY NO. 903564
DISCIPLINARY CASE NOS. 2011-5913 & 2011-6556

In 2012, Respondent Carney received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.5 "Extremely Competent/Highly Competent" in 2010 and 4.0 "Highly Competent" in 2011. He has been awarded 65 medals: 40 for Excellent Police Duty, 22 for Meritorious Police Duty, and three Commendations. [REDACTED]

[REDACTED] Category A in 2008.

Respondent Carney has no prior formal disciplinary record.

For your consideration.


David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SABINO GUZMAN
TAX REGISTRY NO. 941872
DISCIPLINARY CASE NOS. 2011-5792 & 2012-7210

In 2011 and 2012, Respondent Guzman received an overall rating of 3.5 “Highly Competent/Competent” on his annual performance evaluation. He was rated 4.0 “Highly Competent” in 2010. He has been awarded eight medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent Guzman has no prior formal disciplinary record.

For your consideration.

David S. Weisel
David S. Weisel
Assistant Deputy Commissioner Trials